IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 637 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HASMUKHBHAI N DODIYA

Appearance:

MR ND GOHIL,APP. for Appellant.

None appeared for the respondent.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 22/12/2000

ORAL JUDGEMENT

1. The State of Gujarat has filed this appeal against the order of the learned Addl.City Sessions Judge, Ahmedabad in Misc. Criminal Application No. 695 of 1990 passed on 29.06.1990 whereby the application for making inquiry under section 340 of the Code of Criminal Procedure was rejected.

2. The present respondent Hasmukhbhai Narandas Dodiya, was accused of crime registered under C.R.No.I.113/90 of Shahpur Police Station for the offences punishable under sections 504, 302, and 114 of the Indian Penal Code. The said offence is alleged to have been committed on 11.03.1990 and since the accused had not been able to secure release on bail he was in judicial custody.

3. The application which has been rejected by the Trial Court had been filed by the State for seeking inquiry in relation to forged medical certificate as well as making false declaration in Misc.Criminal Application No. 653 of 1990 before which on various dates Misc. Criminal Applications were moved by the accused-respondent seeking bail and seeking extension of temporary bail as follows :

Sr. No.	Cri.Misc. Appln.No.	Date of Presentation.	How disposed of.
1	2	3	4
1	293/90	15.3.1990	Application for bail rejected on 23.3.1990.
2	461/90	20.4.1990	By an order passed on 24.4.1990 temporary bail granted upto 30.4.1990 on the ground that the opponent's wife was to be operated on 25.4.1990 for Hernia Certificate dated 20.4.90 of V.S. Hospital relied upon by the opponent.
3	584/90	30.4.1990	By an order passed on 1.5.90 bail extended upto 11.5.1990 relying upon a Certificate dated 25.4.1990 of Dr.Jitu Patel that the operation was to be performed after two weeks and that the patient was called on 1.5.1990 for fixing the date of

operation.

4	653/90	10.5.1990.	By an order on 11.5.90 further extension rejected (the impugned certificate was produced by the opponent in this proceeding).

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4. A preliminary objection was raised on behalf of the accused respondent that it was necessary for the Trial Court first to frame opinion that "it was expedient in the interest of justice" that an inquiry should be made as contemplated by section 340 of the Code of Criminal Procedure. This preliminary objection was rejected by the Trial Court stating that the action contemplated by the application made before it was in relation to a document produced in a proceeding in the Court and further extension of bail was sought on the strength of such certificate, and therefore, it could not be lightly viewed. I am in complete agreement with the approach of the Trial Court.

5. The Trial Court has reproduced the relevant para of Misc. Criminal Application No. 653 of 1990 as well as the medical certificate dated 09.05.1990 of one Dr.Jitu Patel. However, taking into consideration the letter dated 11.05.1990 of Dr.Jitu Patel, wherein, it was stated that as the wife of the accused had not been fit for being operated upon was directed to approach the doctor after sometime and that she had not been admitted in the Nursing Home and she had not turned up later on nor was she operated upon. The Trial Court held that the claim of the respondent-accused that the medical certificate dated 09.05.1990 was issued by Dr.Jitu Patel stood falsified. The Trial Court has placed the certificate dated 09.05.1990 i.e. Xerox copy which was produced before it, against the letter dated 11.05.1990 produced on behalf of the State and stated that the same are placed against one another only with a view to have proper perspective of the dispute.

6. The learned Addl.Public Prosecutor relied upon the definition of "document" and evidence" as given in the Indian Evidence Act,1872 for the purpose of supporting the application made by the State. On behalf of the original opponent i.e. accused respondent relying upon

the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure,1973 stress was laid on the fact that a Xerox copy or a copy of the document cannot be treated on par with a document produced or given in evidence in proceeding before any Court and in support of this contention Supreme Court decision reported in 1988 Cr.L.J. 427 was relied upon. The learned Addl.Public Prosecutor made an attempt to distinguish the said Supreme Court decision stating that it was not known whether the Supreme Court was dealing with a case where a plain typed copy was produced before it or whether a Xerox copy was produced before it; a proposition was sought to be canvassed, viz. that the case of a simple typed copy bearing no signatures could not be treated as a copy of the document and it could not be as a consequence stated that the document in question was a forged document, however, in relation to a Xerox copy, the same would stand on a different footing.

7. After taking into consideration the submissions of both the sides, the Trial Court has held that the question was not whether it was a typed copy or Xerox copy and whether a Xerox copy would stand on a better footing than the typed copy. But whether a copy of forged document could be treated at par with the forged document itself, and further, whether such copy would meet with the requirement of provision of section 195(1)(b)(1) of the Code of Criminal Procedure; it was in this context that the Supreme Court had held that in absence of the original document alleged to have been forged it could not be stated that the provisions of the relevant section of the Code of Criminal Procedure were attracted.

8. The Trial Court has further stated that eventually in case the Court comes to the conclusion after making inquiry under section 340 of the Code of Crminal Procedure that prima facie an offence was committed and in case a plaint in writing is thereafter made even then in absence of the original forged document having been brought on record no conviction could be secured at the trial.

9. In view of the fact that the decision of the Trial Court is based upon the decision of the Apex Court, it is not necessary to elaborately deal with the issues. Learned APP.Shri Gohil has once again reiterated all the contentions which were raised by the Public Prosecutor before the Trial Court. However, for the reasons recorded by the Trial Court in paragraphs 7 to 12 of the impugned order dated 29.06.1990, there is no warrant to

interfere with the finding recorded in the said judgment and order. This appeal is therefore dismissed. Record and Proceedings be returned.

Sd/-
(D.A.Mehta,J)
m.m.bhatt